



REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF HEALTH
OFFICE OF THE SECRETARY

DEPARTMENT MEMORANDUM

No. 2010 - 0126

TO: ALL UNDERSECRETARIES, ASSISTANT SECRETARIES; DIRECTORS OF BUREAUS, CENTERS FOR HEALTH DEVELOPMENT, SERVICES AND THE PHILIPPINE NATIONAL AIDS COUNCIL, CHIEFS OF MEDICAL CENTERS, HOSPITALS AND TREATMENT AND REHABILITATION CENTERS, EXECUTIVE DIRECTORS OF SPECIALTY HOSPITALS, COMMISSION ON POPULATION AND THE NATIONAL NUTRITION COUNCIL, PRESIDENT OF THE PHILIPPINE HEALTH INSURANCE CORPORATION AND PITC-PHARMA, INC., DIRECTOR-GENERAL OF THE PHILIPPINE INSTITUTE OF TRADITIONAL AND ALTERNATIVE HEALTH CARE, DIRECTOR GENERAL OF THE FOOD AND DRUG ADMINISTRATION, ADMINISTRATOR OF THE LOCAL WATER UTILITIES ADMINISTRATION AND OTHERS CONCERNED

SUBJECT: Protection of the Department of Health, including all of its Agencies, Regional Offices, Bureaus or Specialized/Attached Offices/Units, against Tobacco Industry Interference

DATE: 6 May 2010

Background:

Article 5.3 of the WHO Framework Convention on Tobacco Control (WHO FCTC) recognizes the need to be alert to any efforts by the tobacco industry to undermine or subvert tobacco control efforts as well as the need to be informed of activities of the tobacco industry that have a negative impact on tobacco control efforts. It also obligates State-Parties to protect public health policies from tobacco industry interference.

Pursuant to Administrative Order (AO) 2009 – 0004 on the “Adoption of the Revised DOH Code of Conduct” and in line with the Guidelines for the Implementation of Article 5.3 of the WHO FCTC, the following guidelines are hereby adopted and shall be observed by the Department to ensure that public health policies in relation to tobacco control shall be protected from commercial and other vested interests of the tobacco industry.

Definitions:

“*Contributions*” shall mean anything given, whether monetary or in-kind, in favor of an official, employee, or an agency or institution he represents or is known to represent, other than those required by law. This includes, but is not limited to, any act, right, liberality, payment, gift, service, gratuity, favor, entertainment, loan, funding, and technical or legal advice.

“*Divestment*” shall mean the transfer of title or disposal of interest in property by voluntarily, completely, and actually depriving or dispossessing oneself of his right or title to it in favor of a person or persons other than his spouse and relatives within the fourth degree of consanguinity or affinity.

“*Conflict of Interest*” shall mean a situation created when persons or entities have personal, financial, or any other interest in the tobacco industry, such as having an existing ownership or investment therein, being an officer or a member of the Board of Directors of a corporation (including its subsidiaries, affiliates, branches) or a partner in a partnership engaged therein, and receiving any contribution therefrom. This includes receiving or accepting any offer or contribution from the tobacco industry, even if a promise of favorable consideration is not given in exchange.

“*So-called Corporate Social Responsibility Activities*” shall mean activities of the tobacco industry intended to promote, enhance, or market the corporate brand, product, public relations, or related image. These may include any youth, public education, political, social, financial, educational, community, contribution or any other activity to promote, enhance or market the corporate brand, product, public relations, or related image of the tobacco industry.

“*Tobacco Industry*” shall mean organizations, entities, associations, individuals, and others who work for or in behalf of tobacco manufacturers, wholesalers, distributors, importers of tobacco products, growers, and other individuals or organizations that work to further the interests of the tobacco industry, such as front groups and retailers.ⁱ

“Tobacco Industry Interference” shall mean a broad array of tactics and strategies used directly or indirectly by the tobacco industry to interfere with the setting and implementation of public health policies with respect to tobacco control.

Awareness Raising Campaigns

1. The head of each agency, regional office, bureau, or specialized/attached office/unit, shall conduct a sustained Health Education Campaign on the addictive and harmful nature of tobacco products, the need to protect public health policies for tobacco control from commercial and other vested interests of the tobacco industry, and the true purpose and scope of so-called corporate social responsibility activities.

Interactions

2. Officials and employees shall interact with the tobacco industry only when and to the extent strictly necessary to enable them to effectively regulate, supervise, or control the tobacco industry and tobacco products.ⁱⁱ
3. When interactions with the tobacco industry are necessary, such shall be conducted transparently and in public, through public hearings, with prior public notices of interactions, and disclosure of records of interactions to the publicⁱⁱⁱ and in such a manner that precludes the creation of any perception or impression of a real or potential partnership or cooperation resulting from or on account of such interaction.^{iv}
4. The guidelines to be observed when interacting with the tobacco industry are set forth in detail in *Annex 1*, which forms an integral part of this Department Memorandum.

Denormalizing so-called CSR activities

5. The corporate social responsibility of the tobacco industry is, according to the World Health Organization, an inherent contradiction, as industry’s core functions are in conflict with the goals of public health policies with respect to tobacco control.^v
6. Officials and employees shall not, directly or indirectly, endorse, support, form partnerships with, or participate in the so-called corporate social responsibility (CSR) activities sponsored and promoted by the tobacco industry and shall not accept contributions from the tobacco industry except for compensations due to legal settlements or mandated by law.^{vi}

7. The guidelines to be observed to denormalize the tobacco industry's so-called CSR activities are set forth in detail in *Annex 2*, which forms an integral part of this Department Memorandum.
8. In case any perception or impression of a real or potential partnership or cooperation with the tobacco industry, or support for or participation in the tobacco industry's so-called CSR activities is created, the officials and employees concerned shall remove or correct such perception. Such officials and employees, in coordination with the Centers for Health Development (CHDs) where appropriate, shall, as a minimum, denounce the perceived partnership, cooperation, support, or participation, through an official report to be disseminated to the public and media, including the same media through which such conduct was conveyed.^{vii}

Partnerships and Contributions

9. Officials and employees shall not, directly or indirectly, accept, support or endorse:
 - a. any potential or real partnership or cooperation with the tobacco industry;^{viii}
 - b. the tobacco industry including its youth, public education, or any initiatives that are directly or indirectly related to tobacco control;^{ix}
 - c. any position paper, policy or instrument drafted by or in collaboration with the tobacco industry;
 - d. any contributions from the tobacco industry, either in their own behalf, in behalf of their agency or other entity, or in behalf of their families, relatives, friends, or any other persons, regardless of the value thereof.^x
10. In case of violation of the preceding paragraph, the official or employee concerned shall, within fifteen (15) calendar days, act to:
 - a. discontinue any partnership, agreement, participation and return any contribution given by the tobacco industry;^{xi}
 - b. warn the concerned person or entity of the particular prohibition and the obligation to document and report in accordance with this Department Memorandum; and
 - c. take necessary measures against the tobacco industry representative responsible for such actions.

Conflict of Interest

11. Applicants for public office positions within the Department shall:

- a. be required to declare any interest in or current or previous occupational activity with the tobacco industry, whether gainful or not;^{xii} and
- b. if a conflict of interest exists, be prohibited from being appointed to any position within the Department or within any committee or advisory group that involves development or implementation of tobacco control policies.^{xiii}

12. Current officials and/or employees shall:

- a. avoid conflicts of interest; and
- b. divest themselves of any direct interest in the tobacco industry within sixty (60) calendar days from the effectivity of this Department Memorandum.^{xiv}

13. Former Department officials and employees who have joined the tobacco industry after employment with the Department are strictly prohibited after resignation/separation or retirement from making transactions, directly or indirectly, with incumbent Department officials or employees, on any matter/case pending with the Department.

14. Officials shall ensure that no tobacco industry representative or any person or entity acting to further the tobacco industry's interest shall be a member in any committee or advisory group that sets or implements tobacco control or public health policy.

Awarding of Contracts

15. The Department shall not award contracts for carrying out any work to individuals or institutions that have conflicts of interest with established tobacco control policies.^{xv}

16. Officials and employees shall require, in all contracts with consultants and contractors, prior to any engagement with the Department, the execution of a declaration of interest in the tobacco industry and a stipulation providing for the cancellation or termination of the contract in the event that it is discovered that such consultants or contractors have an existing interest in the tobacco industry.

Preferential Treatment

17. No official or employee shall directly or indirectly grant to the tobacco industry any incentive, privilege, benefit, or preferential treatment. The Department, or any office as may be designated by the Secretary, is responsible for developing a mechanism that allows for the:
 - a. reviewing, documenting, and making publicly accessible any incentive, privilege, benefit, or exemption that may have been extended or allowed to be extended to the tobacco industry;
 - b. monitoring and periodic review to ensure compliance with this provision.

Reports

18. All reports on so-called CSR activities, partnerships, contributions, or offers thereof, interactions, or attempts to interact, and incentives, privileges, benefits, or preferential treatment granted to the tobacco industry required under this Department Memorandum shall be submitted not later than fifteen (15) calendar days from the interaction or attempted interaction, or offer or communication of such offer of partnership or contribution, to the Office of the Secretary or any office designated by the latter, unless specified otherwise.
19. Where appropriate, the report shall indicate (i) the nature, source, other details, and value (if applicable) of the so-called CSR activities, partnerships, contributions, and incentives, privileges, benefits, or preferential treatment and (ii) the appropriate action taken thereon.
20. Where appropriate, such as in so-called CSR activities, the report shall be submitted to the Directors of the CHDs concerned, who are required to take appropriate action thereon.


The Director of the CHD shall then immediately report to the Office of the Secretary all instances of so-called CSR activities sponsored and promoted by the tobacco industry, including offers to sponsor and promote the same, in their respective territorial jurisdictions. A copy of the report shall be furnished to the head of the local government unit concerned.

21. Reporting of violations under this Department Memorandum shall be covered by the provision on protected disclosure established under Administrative Order 2009 – 0004.

Enforcement and Monitoring

22. The head of each agency, bureau, regional office, or specialized/attached office/unit shall review his/her respective office's compliance with this Department Memorandum and report to the Office of the Secretary or his designated representative.
23. Compliance with this Department Memorandum shall form part of the performance evaluation of each agency, bureau, regional office, or specialized/attached office/unit.
24. For further guidance, the Department shall keep and periodically update a public record of persons and entities identified as part of the tobacco industry, such as, but not limited to, those having any interest in, engaged in, employed by, in consultation with, or having an attorney-client relationship with, the tobacco industry, or those working to further the interests thereof.
25. In order to ensure the effective implementation of this Department Memorandum, the offices, officials and employees in charge of regulating the tobacco industry as part of their official functions shall ensure that accurate information is obtained from the tobacco industry and made available to the public.
26. Officials and employees in charge of health promotion as part of their official functions shall ensure awareness of the true purpose and scope of so-called CSR activities performed by the tobacco industry and how these activities harm tobacco control policy development and implementation. Details or information obtained in the course of or as a result of enforcing this Department Memorandum shall be used in the awareness raising and information campaign.
27. The provisions in this Department Memorandum shall apply without prejudice to additional or more detailed provisions found in the Department's Code of Conduct or any other Department issuances.

For strict compliance.


ESPERANZA I. CABRAL, MD
Secretary of Health

**GUIDELINES TO BE OBSERVED WHEN MEETING OR OTHERWISE
INTERACTING WITH THE TOBACCO INDUSTRY
(under the circumstances allowed under this Department Memorandum)**

1. Any proposed interaction with the tobacco industry must be made known to all officials concerned, and approved by the Secretary of Health.
2. The agenda for the proposed interaction shall be set in writing. Officials and employees must adhere strictly to the agenda and clarify the goal and structure of the interaction. No departure from, or any modification of any items in, the agenda shall be allowed, unless such departure or modification underwent through the same publication and approval referred to in subsection (a) above.
3. The participants in the interaction must be predetermined, and all details including the names and designations of those who will be involved must be fully disclosed. A lawyer must be present and must closely advise the official/employee/representative during the interaction.
4. Officials and employees shall make the interaction brief, and shall at all times, before the start of such interaction, publicly announce and strictly maintain their right to terminate the interaction at any point.
5. Before the interaction, it must be made clear that such does not in any way imply partnership, dialogue, association, support, or any collaboration with the tobacco industry. The concerned officials and employees must explicitly indicate in writing to the tobacco industry that the tobacco industry may not mischaracterize the nature of the interaction.
6. The interaction shall strictly be held at the premises of the department, office, or unit concerned. Any interaction outside the premises is strictly prohibited.
7. Any photograph taken of this interaction is strictly for documentation purposes only and should not be used for the public relations activities of, or any communications for any other purpose by, the tobacco industry.
8. All stakeholders in tobacco control, including nongovernment organizations, must be notified of the proposed interaction. If possible, the presence of at least one representative from tobacco control stakeholders must be ensured.

9. As much as possible, interactions with the tobacco industry must be conducted through public forums.
10. All interactions with the tobacco industry must be recorded and the official minutes must be prepared by the official or employee concerned. A voice recording of the interaction may be made to assist the staff in preparing the transcript of the interaction. Transcript of the interaction must be filed for record purposes and made available to the public upon request, subject to the conditions provided under Administrative Order 2009 – 0004.
11. Information on the interactions shall be distributed as appropriate. Any misinformation regarding the interaction shall be publicly corrected.
12. Follow-up questions or concerns must be promptly answered, addressed, or decided on.
13. All non-mediated, non-public exchanges or interactions (in person, phone, radio, email, internet, or any other forms of communication) between officials and employees and the representatives of the tobacco industry are prohibited.
14. Officials shall include the following statement in all issuances, contracts, public documents, communications, exchanges and interactions, directly or indirectly involving tobacco:

‘The Department of Health does NOT deal with the tobacco industry or individuals or entities that work to further the interests of the tobacco industry, except to the extent strictly necessary to effectively regulate, supervise, or control the tobacco industry and tobacco products.’

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GUIDELINES TO DENORMALIZE SO-CALLED CSR ACTIVITIES OF THE TOBACCO INDUSTRY

1. The corporate social responsibility of the tobacco industry is an inherent contradiction as the industry's core functions are in conflict with public health policies.^{xvi} The true purpose and scope of so-called CRS activities is to distance its image from the lethal nature of the product it produces and sells, or to interfere with the setting and implementation of public health policies. Such activities are marketing and public relations strategies to promote the tobacco brand product or company name that falls within the definition of advertising, promotion and sponsorship.
2. When officials or employees are approached about, or become aware of, so-called CSR activities, they shall promptly document and report the same, not later than fifteen (15) calendar days from knowledge, to the Directors of the Centers for Health Development (CHD). Upon receipt of such report, the Director of the concerned CHD shall:
 - a. release a statement on how the tobacco industry utilizes the said so-called CSR activities to distance its image from the lethal nature of the product and to interfere with the setting and implementation of public health policies, and make the statement available to the public;
 - b. issue a letter to the particular office, entity, or local government unit (LGU) that received, is about to receive, or is approached by the tobacco industry for so-called CSR activities, reminding it of the true purpose and scope of so-called CSR activities, and enjoin the entity, office or LGU concerned to take appropriate action; and
 - c. in case of violation of laws in relation to advertising, promotion, sponsorship, anti-graft and corrupt practices, the conduct of public officials and employees, and other pertinent laws, notify appropriate agencies for purposes of possible commencement of the appropriate action against the party responsible therefor.
3. The Director of the CHD shall immediately report to the Office of the Secretary all instances of so-called CSR activities of the tobacco industry, including offers to conduct the same, in their respective territorial jurisdictions. The report shall specify the actions taken by such officials and heads in response to such activities or offers.

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- i Guidelines for the Implementation of Article 5.3 of the WHO FCTC.
 - ii Recommendation 2.1, Guidelines for the Implementation of Article 5.3 of the WHO FCTC.
 - iii Recommendation 2.2, Guidelines for the Implementation of Article 5.3 of the WHO FCTC.
 - iv Recommendation 2, Guidelines for the Implementation of Article 5.3 of the WHO FCTC.
 - v Recommendation 6, Guidelines for the Implementation of Article 5.3 of the WHO FCTC.
 - vi Recommendation 6, Guidelines for the Implementation of Article 5.3 of the WHO FCTC.
 - vii Recommendation 2, Guidelines for the Implementation of Article 5.3 of the WHO FCTC.
 - viii Recommendation 3.1, Guidelines for the Implementation of Article 5.3 of the WHO FCTC.
 - ix Recommendation 3.2, Guidelines for the Implementation of Article 5.3 of the WHO FCTC.
 - x Recommendation 4.10, Guidelines for the Implementation of Article 5.3 of the WHO FCTC.
 - xi Recommendation 4.11, Guidelines for the Implementation of Article 5.3 of the WHO FCTC.
 - xii Recommendation 4.5, Guidelines for the Implementation of Article 5.3 of the WHO FCTC.
 - xiii Recommendation 4.8 , Guidelines for the Implementation of Article 5.3 of the WHO FCTC.
 - xiv Recommendation 4.6, Guidelines for the Implementation of Article 5.3 of the WHO FCTC.
 - xv Recommendation 4.3, Guidelines for the Implementation of Article 5.3 of the WHO FCTC.
 - xvi Recommendation 6, Guidelines for the Implementation of Article 5.3 of the WHO FCTC.